

# IS THE END OF THE WAR IN SIGHT: AN ANALYSIS OF CANADA'S DECRIMINALIZATION OF MARIJUANA AND THE IMPLICATIONS FOR THE UNITED STATES "WAR ON DRUGS"

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## I. INTRODUCTION

On September 5, 1989, federal agents enticed a nineteen year-old cocaine dealer to Lafayette Park across the street from the White House as the object of a narcotics sting planned to take place specifically on that particular date in that particular place.<sup>1</sup> The purpose of the sting was to set the stage for President George Bush's first televised speech as president, in which he would declare that the drug epidemic had finally reached the front steps of the White House, and he was ready to drastically escalate the "war" on drugs.<sup>2</sup> If the United States is waging a war, then marijuana is our greatest threat, considering it is the most commonly used illegal drug by Americans.<sup>3</sup> The majority of marijuana consumed domestically in the United States is imported from Mexico or Columbia, but Canada is rapidly becoming a source country for high-quality marijuana products.<sup>4</sup> A pound of marijuana grown in British Columbia can sell for up to \$6,000 in California.<sup>5</sup> The amount of such marijuana seized in attempted smuggling efforts between Canada and the United States increased almost tenfold between 1999 and 2000.<sup>6</sup>

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<sup>1</sup> STEVEN B. DUKE & ALBERT C. GROSS, *AMERICA'S LONGEST WAR* at xv (1993).

<sup>2</sup> *Id.*

<sup>3</sup> U.S. Department of Justice, *United States-Canada Border Drug Threat Assessment: Drug Threats – Marijuana*, at <http://www.usdoj.gov/ndic/pubs07/794/marijuan.htm#Top> (last visited Sept. 22, 2003).

<sup>4</sup> *Id.*

<sup>5</sup> Royal Canadian Mounted Police Criminal Intelligence Program, *Drug Situation in Canada – 2001* at [http://www.rcmp-grc.gc.ca/crim\\_int/drugs\\_2001\\_e.htm](http://www.rcmp-grc.gc.ca/crim_int/drugs_2001_e.htm) at 6 (last visited Sept. 22, 2003) [hereinafter RCMP *Drug Situation - 2001*].

<sup>6</sup> International Office of National Drug Control Policy, *Source Countries and Drug Transit Zones: Canada* at <http://www.whitehousedrugpolicy.gov/international/canada.html> (last visited Sept. 22, 2003) [hereinafter IONDCP, *Source Countries*].

The Canadian Royal Mounted Police estimate that their country produces over 800 *tons* of marijuana each year.<sup>7</sup>

This comment will discuss Canada's drug situation and the effects of the United States "war" on drugs. Furthermore, it will analyze the consequences of Canada's recent move towards decriminalization of marijuana on the United States' stringent anti-drug laws, along with the political impetus behind the drug policies of the two countries. Part II addresses the history of marijuana in both Canada and the United States, the reasons for initially regulating, and later prohibiting, its use. Part III analyzes what effect such prohibitions have on public health and offers an explanation of the history of Canada's move toward decriminalization of marijuana, including a discussion of their country's implemented system for medical marijuana use. Part IV focuses on what reforms are currently taking place in Canada, our nation's political response to such reforms, and how the Canadian move towards decriminalization could affect American drug laws. Part V concludes that the movement toward decriminalization of marijuana is rapidly becoming an unavoidable aspect of international law, and the current laws in the United States should change in response to this movement.

## II. HISTORY OF MARIJUANA IN THE UNITED STATES AND CANADA

### *A. The United States*

The first crop of marijuana planted on American soil was in 1611 in Virginia, which began a thriving hemp industry in the new colonies.<sup>8</sup> Hemp was heavily relied upon by the shipping business for rope and by the colonists for clothing,<sup>9</sup> and by 1850 it

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<sup>7</sup> *Id.*

<sup>8</sup> PATRICK ANDERSON, *HIGH IN AMERICA* 47 (1981).

<sup>9</sup> *Id.*

was the nation's third largest crop, behind cotton and tobacco.<sup>10</sup> Marijuana was utilized as a medicine for multiple analgesic/anesthetic uses between 1840 and 1900; however, the invention of the hypodermic syringe then caused opiates to come into favor for pain relief purposes and marijuana's popularity declined.<sup>11</sup> Facing a rising number of morphine addicts after the Civil War because of its widespread use by wounded soldiers, Congress passed the Harrison Narcotic Act of 1914, which "in effect declared that drug addicts were criminals."<sup>12</sup>

The first instances of recreational uses of marijuana in America are evidenced by the prohibitions enacted by the state of California in 1915.<sup>13</sup> The first states to enact statutes making marijuana use a felony were in the South and Southwest.<sup>14</sup> It has been suggested that the motivation of the statutes was primarily racial, as a response to the influx of Mexican immigrants who during that time brought marijuana and the habit of smoking it to the United States.<sup>15</sup> "The prejudices and fears that greeted peasant immigrants also extended to their traditional means of intoxication – smoking marijuana."<sup>16</sup> The common belief at the time was that users of the drug, such as Mexican immigrants and the "fringes of society," including writers and musicians, were violent people.<sup>17</sup> The fear was that the use of the drug was spreading among the youth of America, causing them to become violent as well.<sup>18</sup> This fear was compounded in the

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<sup>10</sup> DUKE, *supra* note 1, at 44.

<sup>11</sup> RICHARD E. ISRALOWITZ & DARWIN TELIAS, *DRUG USE, POLICY, AND MANAGEMENT* 96 (1998).

<sup>12</sup> ANDERSON, *supra* note 8, at 48.

<sup>13</sup> DUKE, *supra* note 1, at 45.

<sup>14</sup> See ISRALOWITZ, *supra* note 11, at 97; ANDERSON, *supra* note 8, at 49.

<sup>15</sup> *Id.*

<sup>16</sup> ISRALOWITZ, *supra* note 11, at 97.

<sup>17</sup> DUKE, *supra* note 1, at 93.

<sup>18</sup> *Id.*

heart of the American people with the beginning of the “war on marijuana”<sup>19</sup> by “America’s first great anti-marijuana crusader,” Harry Anslinger.<sup>20</sup> When the Federal Bureau of Narcotics was created in 1930, he was appointed head of the new bureau, and soon brought the hard line Prohibition views he was famous for into the anti-drug arena.<sup>21</sup> During this time the press published stories with titles like “Marijuana – Assassin of Youth,” and “Marijuana – Sex-Crazy Drug Menace”<sup>22</sup> The movie *Reefer Madness* proved to be one of the ultimate propaganda cult-classics, in which “casual marijuana use was shown to lead swiftly to murder, rape, prostitution, addiction, madness, and death.”<sup>23</sup>

By the end of 1936 all forty-eight states had laws regulating the sale, use, and possession of marijuana, and in 1937 Congressional hearings began on the Marijuana Tax Act of 1937.<sup>24</sup> Anslinger testified before Congress, comparing marijuana to opium in that “[o]pium has all of the good of Dr. Jekyll and all of the evil of Mr. Hyde. This drug [marijuana] is entirely the monster Hyde.”<sup>25</sup> Dr. W.C. Woodward, legislative counsel for the American Medical Association, protested the Act, warning that marijuana had possible future medical uses.<sup>26</sup> Moreover, he argued that no legitimate evidence had shown that marijuana actually caused an increase in criminal behavior, but Woodward’s views were basically laughed at or ignored.<sup>27</sup> The Marijuana Tax Act officially became law on October 1, 1937.<sup>28</sup>

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<sup>19</sup> ISRALOWITZ, *supra* note 11, at 97.

<sup>20</sup> ANDERSON, *supra* note 8, at 49.

<sup>21</sup> See generally ANDERSON, *supra* note 8, at 50 (detailing Anslinger’s rise through different government agencies and his crackdown on liquor purchasers during Prohibition).

<sup>22</sup> ISRALOWITZ, *supra* note 11, at 97.

<sup>23</sup> ANDERSON, *supra* note 8, at 51.

<sup>24</sup> ISRALOWITZ, *supra* note 11, at 98.

<sup>25</sup> DUKE, *supra* note 1, at 45.

<sup>26</sup> ANDERSON, *supra* note 8, at 51; ISRALOWITZ, *supra* note 11, at 102.

<sup>27</sup> ANDERSON, *supra* note 8, at 51; ISRALOWITZ, *supra* note 11, at 102.

<sup>28</sup> ANDERSON, *supra* note 8, at 51.

The Act did not outlaw marijuana outright; however, it taxed the grower, distributor, seller, and buyer, and imposed administrative burdens that “made it . . . almost impossible to have anything to do with [marijuana].”<sup>29</sup> Soon after the Act was passed, most states passed laws making the use or sale of marijuana a felony.<sup>30</sup> By the early 1970’s marijuana was gradually becoming a political issue.<sup>31</sup> Richard Nixon, who had run on a platform of “law and order” in 1968, attempted to make good on his promises with aggressive anti-drug rhetoric declaring a much-publicized “war” on marijuana.<sup>32</sup> The Drug Reform Act of 1970, under the guidance of Democratic Representative Edward Koch of New York, created the National Commission on Marijuana and Drug Abuse (the Marijuana Commission) partly in response to a growing national awareness of the need for drug-law reform.<sup>33</sup> The Act was successful for reformers as well as conservatives: Nixon, seeking to fulfill campaign promises, was pleased by the reclassification of marijuana as a dangerous drug.<sup>34</sup> On the other hand, the federal penalty for possession dropped from a felony to a misdemeanor.<sup>35</sup>

The federal law served as a model for many state laws, and set off a new era of reform among the states; within two years of the Act’s passage, a first-time marijuana offense was reduced to a misdemeanor in almost every state.<sup>36</sup> In 1972, the Marijuana Commission issued an official report, believed to be the most exhaustive study of marijuana ever conducted in the United States, which revealed that moderate marijuana

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<sup>29</sup> ISRALOWITZ, *supra* note 11, at 98.

<sup>30</sup> ANDERSON, *supra* note 8, at 51.

<sup>31</sup> *Id.* at 56.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 63.

<sup>34</sup> *Id.*

<sup>35</sup> ANDERSON, *supra* note 8, at 63.

<sup>36</sup> *Id.*

consumption is relatively harmless.<sup>37</sup> In 1973, Oregon became the first state to decriminalize marijuana, changing the punishment for simple possession from a jail sentence to a \$100 fine.<sup>38</sup> By 1977, nine more states had passed similar decriminalization bills.<sup>39</sup> 1980 saw the Food and Drug Administration (FDA) responding to the twenty-plus states that had approved medicinal marijuana and legalized the use of THC pills to regulate nausea caused by chemotherapy drugs, only if other more traditional treatments had failed.<sup>40</sup> More recently, California passed Proposition 215 in 1996, which allows terminally ill patients to use marijuana as long as they have a legitimate medical need;<sup>41</sup> and Alaska legalized (for the second time in the state's history) individual use of marijuana in private homes on September 2, 2003.<sup>42</sup> However, Alaska Governor Frank H. Murkowski reminded citizens that marijuana use is still prohibited by federal law, in Alaska and every other state as well, regardless of what the state legislature decides.<sup>43</sup>

#### *B. Canada*

The introduction of marijuana to Canada is similar to that in the United States. Cannabis hemp was one of the first crops sown by a European on Canadian soil.<sup>44</sup> The first record of a cannabis harvest was by a French pharmacist named Louis Hebert who emigrated from Paris in 1609.<sup>45</sup> During the late 1500's a hemp shortage arose in Europe, and in response Europe turned to the New World to help provide the plant which was

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<sup>37</sup> *Id.* at 91.

<sup>38</sup> *Id.* at 123.

<sup>39</sup> *Id.* at 202.

<sup>40</sup> ANDERSON, *supra* note 8, at 306.

<sup>41</sup> Marijuana: The Facts, *Drug Policy Alliance* at <http://www.drugpolicy.org/marijuana/index.cfm?> (last visited Sept. 22, 2003).

<sup>42</sup> Governor Concerned About Re-Legalization of Marijuana, *Capital City Weekly* at <http://www.capweek.com> (last visited October 13, 2003).

<sup>43</sup> *Id.*

<sup>44</sup> The Complete History of Cannabis in Canada, *History of Cannabis in Canada* at <http://www.hackcanada.com/canadian/freedom/hempinfodoc2.html> at 1 (last visited September 22, 2003) [hereinafter Cannabis in Canada].

<sup>45</sup> *Id.*

necessary to outfit their massive navy with needed sailcloth.<sup>46</sup> Soon New England was growing hemp for Britain and the French Royal Warehouses promised to buy all the hemp that Canada could produce.<sup>47</sup> The necessity for large quantities of hemp dwindled somewhat in the nineteenth century due to the invention of steam power, which reduced the need for hemp/canvas sails in the navy; and the invention of the cotton gin allowed clothing fibers to be retrieved with less expense and labor than that required for hemp.<sup>48</sup>

Canada's eventual prohibition of marijuana, just as in the United States, began with suspected racist undertones.<sup>49</sup> In 1881, after gold was discovered in British Columbia, over 17,000 Chinese were brought in from South China to construct Canada's railroad.<sup>50</sup> When it was completed thousands of Chinese immigrants were left destitute and often homeless.<sup>51</sup> Wanting to restrict Chinese immigration and create a way to eliminate some of the immigrants already in Canada, the government turned to legislation prohibiting the Chinese drug of choice: opium.<sup>52</sup> The Opium Narcotic Act of 1908 prohibited the "import, manufacture and sale of opiate for non-medical purposes."<sup>53</sup> This Act served as the basis for all further Canadian drug legislation, "despite the fact that it was created solely to eliminate and [sic] undesirable element from the labour pool."<sup>54</sup> Problems enforcing the Act resulted in the Opium and Drug Act of 1911, which covered not only opiates but other drugs as well.<sup>55</sup> The Opium and Drug Act also made use and

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<sup>46</sup> *Id.* at 1.

<sup>47</sup> *Id.* at 1.

<sup>48</sup> *Id.* at 2.

<sup>49</sup> See generally Cannabis in Canada, *supra* note 44.

<sup>50</sup> Cannabis in Canada, *supra* note 44, at 2.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 3.

<sup>53</sup> *Id.* at 3.

<sup>54</sup> *Id.* at 3.

<sup>55</sup> Diane Riley, *Drugs and Drug Policy in Canada: A Brief Review and Commentary*, Canadian Foundation for Drug Policy at <http://www.cfdp.ca/sen1841.htm> at 3 (last visited September 22, 2003).

possession of the prohibited drugs a criminal offense, and increased the police powers of search and seizure.<sup>56</sup> In 1920, the Opium and Drug Branch of the government was created under the guidance of the Department of Health,<sup>57</sup> and in 1923 the Opium and Narcotic Drug Act was passed, which included cannabis as a prohibited substance.<sup>58</sup>

Before the 1920's, cannabis was used in patent medicine to treat different ailments, much as it was in the United States.<sup>59</sup> Also similar to the United States, Canada promulgated their anti-drug stance through a series of propaganda-like articles published in "Maclean's Magazine" written by Emily Murphy under the pen name of Janey Canuck, which were later combined to create a book entitled "The Black Candle."<sup>60</sup> Ms. Murphy believed that Canada should be a "pure" country, comprised only of white persons.<sup>61</sup> These beliefs reflected her membership in a religious group called the "Irish Orange Order" that also espoused such beliefs.<sup>62</sup> Her articles were very "biased and sensationalized," and made statements about marijuana such as:

Persons using this narcotic smoke the dry leaves of the plant, which has the effect of driving them completely insane. The addict loses all sense of moral responsibility . . . [w]hile in this condition they become raving maniacs and are liable to kill or indulge in any forms of violence to other persons, using the most savage methods of cruelty . . .<sup>63</sup>

After the release of "The Black Candle," the Royal Canadian Mounted Police (RCMP) used this book as incentive to increase their police powers and to

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<sup>56</sup> Cannabis in Canada, *supra* note 44 at 3.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 4.

<sup>59</sup> *Id.* at 4.

<sup>60</sup> *Id.* at 4.

<sup>61</sup> Cannabis in Canada, *supra* note 44 at 4.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*



make cannabis illegal under the name “marijuana” in the Opium and Narcotic Drug Act of 1923.<sup>64</sup>

Rates of marijuana use climbed sharply in the 1960’s and 1970’s, even though more and more strict policies were being enforced; some penalties for possession were as high as seven years in prison.<sup>65</sup> The resulting strain on the courts prompted pressure for liberalization of Canada’s drug policy.<sup>66</sup> The Commission of Inquiry in the Non-Medical Use of Drugs (the LeDain Commission) was formed in 1969<sup>67</sup> to address the country’s concerns, and after four years and four million dollars worth of research, the Commission found that the social costs of marijuana prohibition did not justify the nation’s current drug policies.<sup>68</sup> The recommendations of the Commission ranged from outright legalization to small fines for marijuana use.<sup>69</sup> However, despite publicly expressed support from Parliament for decriminalization of marijuana,<sup>70</sup> the results of the study were largely ignored by the Canadian government; and there was only one significant change to the drug law during this time; an amendment to the Narcotic Control Act allowing prosecutors to summarily convict in possession cases, rather than proceed by indictment (a more serious offense if convicted).<sup>71</sup> The LeDain Report also caused a reorganization of the government agencies responsible for drugs, with the formation of the Non-Medical Use of Drugs Directorate (NMUDD) of National Health and Welfare of Canada.<sup>72</sup> This shifted the focus of the drug battle from criminal to health-based, but

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<sup>64</sup> *Id.*

<sup>65</sup> Riley, *supra* note 55 at 4.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> See Riley, *supra* note 55 at 5; Cannabis in Canada, *supra* note 44 at 5.

<sup>69</sup> Cannabis in Canada, *supra* note 44 at 5.

<sup>70</sup> Cannabis in Canada, *supra* note 44 at 6.

<sup>71</sup> Riley, *supra* note 55 at 5.

<sup>72</sup> *Id.*

brought a new litany of problems concerning the sudden combination of law enforcement officials working with a government agency that also concerned health issues unrelated to drugs.<sup>73</sup>

In 1987, feeling pressure from Reagan's "War on Drugs" in the United States, Canada created Canada's Drug Strategy (CDS) which brought \$210 million in new funding to enforcement, treatment, and prevention programming.<sup>74</sup> However, in 1997 the funding ended, causing the health budget for drugs to be cut to 40% of its former amount.<sup>75</sup> The Policy and Research Unit of the Canadian Centre on Substance Abuse, which was researching alternatives to the current prohibitionist model of drug policy, was closed due to lack of funding in 1996.<sup>76</sup> The Controlled Drugs and Substances Act was enacted in May of 1997, bringing the focus of drug legislation back into the criminal arena, and creating a substantial legal change in the drug scheduling system used in Canada.<sup>77</sup> Marijuana is no longer a narcotic or a Schedule I drug such as heroin or cocaine, but is now a Schedule II drug, and the penalties for possession, distribution, and production have been lessened so that simple possession (for personal use) has become a summary offense (similar to an American misdemeanor).<sup>78</sup> In June of 2001, the Controlled Drugs and Substances Act was amended to allow possession and purchase of

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<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> Riley, *supra* note 55 at 6.

<sup>77</sup> *Id.*

<sup>78</sup> Canada's Drug Strategy, *Cannabis* at <http://www.hc-sc.gc.ca/hecs-sesc/cds/cannabis/facts.htm> at 1 (last visited September 22, 2003).

marijuana for legitimate medical needs with the passage of the Marihuana Medical Access Regulations.<sup>79</sup>

Even more recently, on September 16, 2003, Judge Patrick Chen, a provincial court judge in British Columbia, ruled that simple possession of marijuana is no longer illegal, forcing other judges in the province to follow his decision, for now.<sup>80</sup> British Columbia is the fourth province, after Ontario, Prince Edward Island, and Nova Scotia, to overturn the law prohibiting simple possession for personal use.<sup>81</sup> In July of 2000, due to confusion over the law created by an Ontario Appeal Court judge overturning the law within Ontario, Parliament was ordered to pass a new law addressing the situation within a year, but the legislation still has not been passed.<sup>82</sup>

## II. EFFECTS OF PROHIBITION AND VIEWS ON DECRIMINALIZATION

### *A. Measurable drug use and its effects on public health*

#### 1. The United States

Marijuana is the most popular illegal drug in the United States, with 14.6 million people admitting to using it within the past month based on the National Survey on Drug Use and Health in 2002.<sup>83</sup> Almost one third of these users also admitted to using the drug on twenty or more days in the past month.<sup>84</sup> 40% of Americans over the age of twelve admit to having used marijuana at some point; however, only 11% of those people

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<sup>79</sup> Marihuana Medical Access Regulations, *Controlled Drugs and Substances Act* at [http://www.hc-sc.gc.ca/hecs-sesc/controlled\\_substances/pdf/regulations/marihuana\\_06-13-01.pdf](http://www.hc-sc.gc.ca/hecs-sesc/controlled_substances/pdf/regulations/marihuana_06-13-01.pdf) at 3-4 [hereinafter *Medical Marihuana Regulations*].

<sup>80</sup> Marijuana Possession Laws Struck Down in British Columbia, *The Province* at <http://www.medicalmarihuana.ca/legalbc.html> (last visited September 29, 2003) [hereinafter *BC Strike*].

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> Marijuana Prevalence Estimates, *Office of National Drug Control Policy* at [http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana\\_b.html](http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana_b.html) at 1 (quoting Substance Abuse and Mental Health Services Administration, *Results from the 2002 National Survey on Drug Use and Health: National Findings* (September 2003) (last visited September 22, 2003).

<sup>84</sup> *Id.* at 1.

reported using it in the past year.<sup>85</sup> Only 6% of Americans age twelve or older were currently using marijuana in 2002, meaning there were approximately 2.6 million *new* users in the year 2001 alone.<sup>86</sup> College students and young adults reported some of the highest rates of marijuana usage in the study, with 50% of college students and 57% of those between the ages of nineteen and twenty-eight reporting marijuana usage in their lifetime.<sup>87</sup> 19.7% of college students admitted using marijuana in the past thirty days, and 16.9% of adults between the ages of nineteen and twenty-eight had used marijuana within the previous thirty days as well.<sup>88</sup>

There were 1,586,902 arrests for drug abuse violations, with 40% of those arrests being for possession of marijuana and 5.2% for marijuana sales or manufacturing, in the year 2001.<sup>89</sup> In the 2001 fiscal year, The United States Sentencing Commission reported 7,991 Federal drug court sentences for marijuana-related offenses, mainly drug trafficking.<sup>90</sup> According to the Arrestee Drug Abuse Monitoring Program, “a median of 1.5% of adult male arrestees and 28.4% of adult female arrestees tested positive for marijuana at the time of arrest in 2002.”<sup>91</sup>

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<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> Marijuana Prevalence Estimates, *Office of National Drug Control Policy* at [http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana\\_b.html](http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana_b.html) at 2 (quoting National Institute on Drug Abuse and University of Michigan, *Monitoring the Future National Survey Results on Drug Use, 1975-2002, Volume II: College Students and Adults Ages 19-40* (2003) (last visited September 22, 2003)).

<sup>88</sup> *Id.*

<sup>89</sup> Marijuana Prevalence Estimates, *Office of National Drug Control Policy* at [http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana\\_b.html](http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana_b.html) at 4 (quoting Federal Bureau of Investigation, *Crime in the United States 2001, Persons Arrested* (October 2002) (last visited September 22, 2003)).

<sup>90</sup> Marijuana Prevalence Estimates, *Office of National Drug Control Policy* at [http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana\\_b.html](http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana_b.html) at 4 (quoting Drug Enforcement Administration, *Drug Trafficking in the United States* (September 2001) (last visited September 22, 2003)).

<sup>91</sup> Marijuana Prevalence Estimates, *Office of National Drug Control Policy* at [http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana\\_b.html](http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana_b.html) at 4 (quoting National

What do these rates of drug use and arrest mean? They mean that a large amount of American currency is being lost from the stream of commerce due to illegal purchases.<sup>92</sup> A study tracking drug spending habits between 1988-1998 determined that Americans spend an average of \$10.4 billion a year on marijuana.<sup>93</sup> These rates mean that there are an increasing number of marijuana users suffering from the detrimental side effects of the smoking process, which are similar to those experienced by tobacco smokers.<sup>94</sup> These include ailments such as increased respiratory infections (like bronchitis), impaired short-term memory function, and lung cancer.<sup>95</sup> However, studies independent of the government have often found contradictory conclusions in studies of marijuana users.<sup>96</sup> For example, while the National Institute on Drug Abuse found in a 2001 study that marijuana is addictive and causes withdrawal symptoms in test subjects,<sup>97</sup> the respected Merck Manual has found that “cannabis can be used episodically without evidence of social or psychological dysfunction . . . no withdrawal syndrome occurs when the drug is discontinued . . . [but] high-dose smokers of marijuana develop

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Institute of Justice, *Preliminary Data on Drug Use & Related Matters Among Adult Arrestees & Juvenile Detainees*, 2002 (2003) (last visited September 22, 2003).

<sup>92</sup> See generally Marijuana Prevalence Estimates, *Office of National Drug Control Policy* at [http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana\\_b.html](http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana_b.html) at 2 (quoting Office of national Drug Control Policy, *What America's Users Spend on Illegal Drugs 1988-1998* (December 2000) (last visited September 22, 2003).

<sup>93</sup> Marijuana Prevalence Estimates, *Office of National Drug Control Policy* at [http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana\\_b.html](http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana_b.html) at 2 (quoting Office of national Drug Control Policy, *What America's Users Spend on Illegal Drugs 1988-1998* (December 2000) (last visited September 22, 2003).

<sup>94</sup> See generally The Merck Manual, Cannabis (Marijuana) Dependence, at <http://www.merck.com/pubs/mmanual/section15/chapter195/195e.htm> (last visited September 18, 2003) [hereinafter The Merck Manual].

<sup>95</sup> Marijuana Prevalence Estimates, *Office of National Drug Control Policy* at [http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana\\_b.html](http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana_b.html) at 3 (quoting National Institute on Drug Abuse, *Research Report Series – Marijuana Abuse* (October 2001) (last visited September 22, 2003) [hereinafter NIDA Research Report Series].

<sup>96</sup> See generally The Merck Manual *supra* note 94.

<sup>97</sup> Marijuana Prevalence Estimates, *Office of National Drug Control Policy* at [http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana\\_b.html](http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana_b.html) at 3 (quoting National Institute on Drug Abuse, *Marijuana Infobox* (October 2001) (last visited September 22, 2003).

pulmonary symptoms (episodes of acute bronchitis, wheezing, coughing, and increased phlegm) . . . .”<sup>98</sup>

While the NIDA reports that “[m]arijuana has the potential to promote cancer of the lungs . . . because marijuana smoke contains 50 percent to 70 percent more carcinogenic hydrocarbons than does tobacco smoke,”<sup>99</sup> the Merck Manual reveals that “[e]ven daily smokers do not develop obstructive airway disease. Pulmonary carcinoma has *not been reported in persons who smoke only marijuana*, possibly because less smoke is inhaled than during cigarette smoking.”<sup>100</sup> There is much conflicting information as far as the health effects of smoking marijuana; however, it is clear that lung damage is possible. The totality of the effects of this drug will probably not be completely clear until further studies occur; for now it is obvious that there is much uncertainty as to the factual effects of the drug.<sup>101</sup>

Marijuana use is also often reported in deaths involving drug abuse, in emergency room visits, and in admissions into drug rehabilitation facilities.<sup>102</sup> Marijuana was the second most frequently mentioned illegal drug after cocaine in 2002 by emergency departments.<sup>103</sup> Mentions of marijuana use in emergency room admissions statistically did not change between 2001-2002, but have risen 164% since 1995.<sup>104</sup> However, a side note points out that a “drug mention” only refers to a substance that was recorded during

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<sup>98</sup> The Merck Manual *supra* note 94.

<sup>99</sup> NIDA Research Report Series, *supra* note 95.

<sup>100</sup> The Merck Manual, *supra* note 94 (emphasis added).

<sup>101</sup> *See, e.g.* DUKE, *supra* note 1, at 43-54, which discusses many of the contradictory and questionable beliefs prevalent in society on marijuana usage.

<sup>102</sup> *See, e.g.* Marijuana Prevalence Estimates, *Office of National Drug Control Policy* at [http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana\\_b.html](http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana_b.html) at 3 (last visited September 22, 2003).

<sup>103</sup> Marijuana Prevalence Estimates, *Office of National Drug Control Policy* at [http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana\\_b.html](http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana_b.html) at 3 (quoting Substance Abuse and Mental Health Service Administration, *Emergency Department Trends from the Drug Abuse Warning Network, Final Estimates 1995-2002* (July 2003) (last visited September 22, 2003)).

<sup>104</sup> *Id.*

an emergency room visit, not necessarily the drug that *caused* the emergency room visit.<sup>105</sup> According to the Merck Manual, “tests after one-time use remain positive for days or weeks after discontinuation . . . the smoker may be free of drug effect by the time his urine is tested.”<sup>106</sup> As a result, someone who smoked marijuana three weeks ago but then experienced complications from heroin would still register as an emergency room marijuana “drug mention,” even if he was not under the influence of marijuana at the time the emergency room visit took place.<sup>107</sup>

Marijuana also ranked among the ten most common drugs reported in deaths involving drug abuse in a study which included forty-two metropolitan areas in the United States.<sup>108</sup> However, the study also found that an average of 79% of those deaths also involved at least one other substance.<sup>109</sup> There is no documentation to suggest that there has ever been a death from marijuana overdose.<sup>110</sup> 14.8% of admissions to drug treatment facilities in 2000 were for use of marijuana as the “primary substance of abuse.”<sup>111</sup> However, the Merck Manual points out that “[t]he number of users who have sought treatment or counseling to help them stop may be exaggerated because persons who test positive in the workplace are often ordered to seek treatment . . . .”<sup>112</sup> So, even in “hard numbers” and statistics, the effects of marijuana on the general public health of

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<sup>105</sup> *Id.*

<sup>106</sup> The Merck Manual, *supra* note 94.

<sup>107</sup> *See generally* The Merck Manual, *supra* note 94.

<sup>108</sup> Marijuana Prevalence Estimates, *Office of National Drug Control Policy* at [http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana\\_b.html](http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana_b.html) at 3 (quoting Substance Abuse and Mental Health Services Administration, *Mortality Data from the Drug Abuse Network, 2001* (PDF), (January 2003) (last visited September 22, 2003)).

<sup>109</sup> *Id.* at 4.

<sup>110</sup> DUKE, *supra* note 1, at 51.

<sup>111</sup> Marijuana Prevalence Estimates, *Office of National Drug Control Policy* at [http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana\\_b.html](http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana_b.html) at 4 (quoting Substance Abuse and Mental Health Services Administration, *Treatment Episode Data Set (TEDS) 1994-1999: National Admissions to Substance Abuse Treatment Services* (November 2001) (last visited September 22, 2003)).

<sup>112</sup> The Merck Manual, *supra* note 94.

America are still not clear. What is obvious, however, is that significant numbers of American citizens are still using the drug despite nationwide legislation prohibiting its use.<sup>113</sup>

## 2. Canada

Marijuana in Canada, similar to in the United States, is the most popular illegal drug in the country.<sup>114</sup> The Royal Canadian Mounted Police (RCMP), in their 2001 report on the drug situation in Canada, estimated that “marijuana production activities will continue to increase” in the future.<sup>115</sup> The RCMP considered factors such as the number of actual plants seized in Canada on a yearly basis, government intelligence sources, and activity within the drug industry and its participants.<sup>116</sup> The RCMP report focused not necessarily on the health concerns presented by Canadian citizens consuming marijuana, but rather on the public safety issues presented by the crime surrounding the production and dissemination of the product.<sup>117</sup> For example, the RCMP states that there has been an increasing amount of foreign-based organized crime units, particularly out of Asia, producing marijuana in Canada since the mid-1990’s.<sup>118</sup> Public safety is also a concern as electricity being rerouted to indoor growing operations more frequently leads to fires in some Canadian cities.<sup>119</sup> The police also cite the public threat of the methods of protection utilized by the growers for their crops, such as “crop sitters” (armed

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<sup>113</sup> See, e.g. Marijuana Prevalence Estimates, *Office of National Drug Control Policy* at [http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana\\_b.html](http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana_b.html) (last visited September 22, 2003).

<sup>114</sup> RCMP *Drug Situation – 2001*, *supra* note 5 at 6.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> See, e.g. RCMP *Drug Situation – 2001*, *supra* note 5.

<sup>118</sup> RCMP *Drug Situation – 2001*, *supra* note 5 at 6.

<sup>119</sup> *Id.* at 7.



“security guards,” usually criminals themselves) and booby traps.<sup>120</sup> The booby traps are far from rudimentary; police have discovered metal doors connected to high voltage wires at the entrance to grow rooms, and even motion detectors connected to spraying systems designed to spray toxic gas into the ventilation system if an intruder is detected.<sup>121</sup> Police also have noticed trends in homicides and assaults related to drug territory skirmishes, as well as home invasions and beatings associated with stealing others’ harvests, especially in British Columbia.<sup>122</sup> While police say that “violence is not a factor that Canadians readily associate with the cultivation of marijuana,” there is another disturbing criminogenic trend developing as a consequence of the increase in violent crime: police are encountering larger amounts of firearms and ammunition when conducting raids on marijuana growing operations.<sup>123</sup>

Canada’s drug enforcement efforts, however, are notable: they spent approximately U.S. \$350 million at the federal level in 2002 to combat illicit drug use in Canada.<sup>124</sup> They address substance abuse as both a health issue and a criminal issue, after the Canadian government was reorganized following the recommendations of the LeDain Commission, rather than just a criminal issue as the United States does.<sup>125</sup> This means that their coordinating agency for drug strategy is Health Canada, a federal department that is in charge of all health-based national policies.<sup>126</sup> The Canadian Centre on Substance Abuse also plays a role in the nation’s anti-drug efforts by encouraging

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<sup>120</sup> RCMP *Drug Situation – 2001*, *supra* note 5 at 7.

<sup>121</sup> RCMP *Drug Situation – 2001*, *supra* note 5 at 7.

<sup>122</sup> RCMP *Drug Situation – 2001*, *supra* note 5 at 7 (home of the US \$6,000 per pound marijuana mentioned *supra* at page 1).

<sup>123</sup> RCMP *Drug Situation – 2001*, *supra* note 5 at 7.

<sup>124</sup> IONDCP, *Source Countries*, *supra* note 6.

<sup>125</sup> United States-Canada Border Drug Threat Assessment, *Response to the Situation at* <http://www.usdoj.gov/ndic/pubs07/responses.htm> at 2 (last visited September 22, 2003)[hereinafter US-Canada Border Assessment, *Response*]; *see supra* page 9.

<sup>126</sup> *Id.* at 4.

public participation in an effort to reduce drug abuse and by providing education and information about drug-related issues.<sup>127</sup> The health-centered approach also means that most treatment and rehabilitation programs are overseen by federal, provincial, or territorial jurisdiction, and that specialized training in “drug issues and appropriate responses” is available and encouraged for health care professionals.<sup>128</sup> Canada also focuses its anti drug message on the groups most at risk for the effects of drug use: youth, women, seniors, Aboriginal peoples, and driving-while-impaired offenders.<sup>129</sup> Unlike the United States, which targets its law enforcement efforts at prosecuting possession,<sup>130</sup> Canada’s law enforcement efforts focus on fighting the organized crime groups that “control most of the production, smuggling, and distribution of illegal drugs in Canada.”<sup>131</sup>

Canada also has a different approach than the United States when it comes to drug violation sentencing procedures. The United States, in keeping with their emphasis on the criminogenic aspect of cannabis consumption, has created the following mandatory minimum sentences for marijuana offenses:

The punishment for growing 100 or more cannabis plants or possessing more than 100 kilograms of marijuana is a minimum prison sentence of 5 years for first-time offenders. The punishment for growing 1,000 or more plants or possessing 1,000 or more kilograms of marijuana is a minimum prison sentence of 10 years for first time offenders.<sup>132</sup>

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<sup>127</sup> *Id.* at 3.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> Marijuana Prevalence Estimates, *Office of National Drug Control Policy* at [http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana\\_b.html](http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana_b.html) at 4 (quoting Federal Bureau of Investigation, *Crime in the United States 2001, Persons Arrested* (October 2002) (last visited September 22, 2003), which states that 40% of arrests for drug abuse violations in America in 2001 were for possession of marijuana.

<sup>131</sup> US-Canada Border Assessment, *Response*, *supra* note 125 at 3.

<sup>132</sup> U.S. Department of Justice, *United States-Canada Border Drug Threat Assessment: Drug Threats – Marijuana* at <http://www.usdoj.gov/ndic/pubs07/794/marijuan.htm#Top> at 5 (last visited September 22, 2003).

In contrast, Canada's maximum punishment for cannabis cultivation (no matter what the quantity) is a maximum prison sentence of seven years.<sup>133</sup> Charges of illicit cultivation generally are accompanied by charges of possession for the purpose of trafficking, which *can* be punished by life imprisonment; however, rarely are sentences more than four years imposed, even in large cases.<sup>134</sup>

Canada's seemingly more liberal view of drug policy is evident in their increasing push for medical marijuana.<sup>135</sup> On June 9, 1999, Health Canada released the "Research Plan for Marijuana for Medicinal Purposes" which detailed a research plan for determining the safety of marijuana for medicinal purposes.<sup>136</sup> Also in June of 1999, the agency "established a process enabling Canadians to apply for an exemption to possess and/or cultivate marijuana for medical purposes under Section 56 of the Controlled Drugs and Substances Act with the *support of their medical practitioner.*"<sup>137</sup> On May 5, 2000, Health Canada issued a request for proposal to establish a federally funded, locally grown, standardized quality source of marijuana for research purposes.<sup>138</sup> On June 28, 2000, the proposal was closed and reviewed by a committee of experts.<sup>139</sup> On September 14, 2000, Health Canada announced a new, more detailed regulatory approach for the medical use of marijuana.<sup>140</sup> This approach clarified issues that had arisen since the original introduction of the exemption process, such as the definition of medical necessity and the considerations given when determining who should and should not be

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<sup>133</sup> *Id.* at 5.

<sup>134</sup> *Id.* at 5.

<sup>135</sup> See generally Health Canada, *Marijuana for Medical Purposes* at [http://www.hc-sc.gc.ca/english/media/releases/2000/2000\\_116ebk.htm](http://www.hc-sc.gc.ca/english/media/releases/2000/2000_116ebk.htm) (last visited October 12, 2003)[hereinafter Health Canada, *Marijuana for Medical Purposes*.].

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* (emphasis added).

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> Health Canada, *Marijuana for Medical Purposes*, *supra* note 135.

awarded the exemption.<sup>141</sup> On December 21, 2000, Health Canada's proposal for the provision of standardized quality marijuana for research purposes was fulfilled when the agency, along with Public Works and Government Services Canada, publicly revealed that a contract had been awarded to provide a "reliable source of quality, standardized marijuana products to meet medical and research needs in Canada."<sup>142</sup> The contract was subject to stringent standards, including producing the first crop within a year of the contract award, subjecting the marijuana to laboratory testing and quality control throughout the life cycle of the plant, and conforming to the requirements of government agencies controlling food and drug quality.<sup>143</sup> Finally, on July 30, 2001, the Narcotic Control Regulations were amended to state the Marijuana Medical Access Regulations.<sup>144</sup> The regulations "established a compassionate framework to allow the use of marijuana by people who are suffering from serious illnesses and where the use of marijuana is expected to have some medical benefit that outweighs the risk of its use."<sup>145</sup>

### III. CURRENT EFFORTS AT REFORM IN CANADA AND THE UNITED STATES RESPONSE

#### A. *Bill C-344*

##### 1. Brief History of Canadian Government

Canada is a constitutional monarchy, meaning that executive authority is exercised by the Crown, who is actually Queen Elizabeth of Britain, but is represented in Canada by the Governor General.<sup>146</sup> The Crown is advised by the Prime Minister or

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<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> Health Canada, *Medical Marijuana FAQ* at <http://www.hc-sc.ca/english/protection/marijuana.html> (last visited October 12, 2003) [hereinafter Health Canada, *Medical Marijuana FAQ*].

<sup>145</sup> *Id.*

<sup>146</sup> The Canadian Government, *How Canadians Govern Themselves* at <http://www.pm.gc.ca/default.asp?Language=E&Page=thecanadiangovernment&Sub=SystemofGovernment> (last visited October 11, 2003) [hereinafter Canadian Government].

Premier and his or her Cabinet, but no federal legislation can be passed without “Royal Assent” being given by the Governor General.<sup>147</sup> Federal legislation is passed by the elected federal Parliament, on the condition of Royal Assent by the Governor General (this is similar to the United States Congress passing legislation on the condition that the President signs the bill).<sup>148</sup> Parliament consists of the Queen, the Senate, and the House of Commons.<sup>149</sup> Federal legislation is usually introduced in the House of Commons.<sup>150</sup> The House of Commons is made up of Members, elected every three to four years, who each represent one of Canada’s 301 constituencies.<sup>151</sup> The leader of the party that holds the most seats in the House of Commons is usually asked by the Governor General to form a government and become Prime Minister. The party with the second largest number of seats is called the “Official Opposition” and their leader is referred to as the “Leader of the Official Opposition.”<sup>152</sup> At the lower levels, Canada is made up of provinces (similar to states in the United States) which are governed by Lieutenant Governors.<sup>153</sup> The Lieutenant Governors represent the Crown at the provincial level and must give Royal Assent for provincial legislation to become law, just as the Governor General must at the federal level.<sup>154</sup>

## 2. Introduction of C-38

On May 27, 2003, federal legislation removing criminal penalties for possession of small amounts of marijuana and creating new, harsher penalties for large scale growers

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<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> Canadian Government, *supra* note 146.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

of marijuana, was introduced to the Canadian House of Commons.<sup>155</sup> Martin Cauchon, Canadian Justice Minister, says that his country is a “different place with different values,” and said that “Canadians no longer believe in imposing criminal sanctions for smoking marijuana” or possessing small amounts on their person.<sup>156</sup> Under the new bill, cannabis possession and production would remain illegal; what would change would be the approach to enforcing the laws of the Controlled Drugs and Substances Act.<sup>157</sup> Health Canada, in a comprehensive report addressing many concerns raised by those opposing the introduction of the bill, reported in May of 2003 that “rising rates of marijuana use and falling support for incarceration as a penalty for cannabis possession underscore the need to modernize current laws.”<sup>158</sup> They cited the stigma associated with a criminal conviction in areas such as job choices, travel, and education as one of the incentives for the bill.<sup>159</sup>

The bill consists of four main changes in the enforcement of the current Controlled Drugs and Substances Act.<sup>160</sup> These include replacing the current criminal penalties with alternatives for possession of fifteen grams or less of marijuana; allowing law enforcement officials the discretion to determine whether to issue only a ticket or to require the offender to appear in criminal court for possession of between fifteen and thirty grams of marijuana; providing for harsher penalties when aggravating factors are present, including “possession while committing an indictable offense, while operating a motor vehicle or while on or near school grounds;” and creating tougher penalties for

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<sup>155</sup> See Colin Nickerson, *Canada Offers Liberal Marijuana Bill*, BOSTON GLOBE, May 28, 2002 at A8; Health Canada, *Cannabis Reform Bill* at [http://www.hc-sc.ca/English/media/releases/2003/2003\\_35bk2.htm](http://www.hc-sc.ca/English/media/releases/2003/2003_35bk2.htm) (last visited October 12, 2003).

<sup>156</sup> *Id.* at 1.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.* at 2.

grow operations, i.e. increasing the penalties in accordance with the size of the operation.<sup>161</sup> The proposal doubles the maximum penalty for growing marijuana from seven to fourteen years imprisonment.<sup>162</sup> The bill is not actually a proposal for new law; rather, it would amend the “Contraventions Act to allow for the designation of certain criminal offences as contraventions and to specify that contraventions may be prosecuted by means of either a summons or ticket . . .” and the “Controlled Drugs and Substances Act to create offences with respect to the possession of small amounts of cannabis (marijuana) and the production of cannabis (marijuana).”<sup>163</sup> The proposal, as of October 21, 2003, had survived its first reading (on May 27, 2003) and been referred to a Special Committee on the Non-medical Use of Drugs.<sup>164</sup>

The Contraventions Act is a Canadian law that allows tickets to be issued by provincial law enforcement for minor federal offenses, which would then be handled by the provincial court system.<sup>165</sup> Under Bill C-38, new possession offenses would be added to the list of offenses the Contraventions Act applies to, and allow persons charged with such offenses to receive tickets that would require a fine to be paid rather than gaining a criminal record.<sup>166</sup> Possession of fifteen grams or less of marijuana would be punishable by a fine of \$150 for an adult and \$100 for a youth, possession of fifteen grams or less of marijuana where aggravating factors exist would be punishable by a fine of \$400 for an adult and \$250 for a youth, and in situations where the offender possessed between

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<sup>161</sup> Nickerson, *supra* note 155 at 2.

<sup>162</sup> *Id.*

<sup>163</sup> H.C. C-38, 37<sup>th</sup> Parliament (2003) *available at* <http://www.parl.gc.ca/LEGISINFO/index.asp?Lang=E&query=3567&List=toc&Session=11> (last visited October 25, 2003) [hereinafter Bill C-38].

<sup>164</sup> Status of Bill, H.C. C-38, 37<sup>th</sup> Parliament (2003) *available at* <http://www.parl.gc.ca/LEGISINFO/index.asp?Lang=E&Chamber=N&StartList=A&EndList=Z&Session=11&Type=0&Scop=1&query=3567&List=stat> (last visited October 25, 2003) [hereinafter Status of Bill].

<sup>165</sup> Nickerson, *supra* note 155 at 2.

<sup>166</sup> *Id.*

fifteen and thirty grams, the police officer would have the discretion to decide if the person should receive a ticket or be issued a summons for summary conviction.<sup>167</sup> If the officer decided to issue a ticket, the fine would be \$300 for an adult and \$200 for a youth, and the summary conviction penalty would be “up to six months imprisonment and/or up to a \$1,000 fine.”<sup>168</sup> Martin Cauchon, the Minister of Justice who introduced the bill, stated in testimony before the House of Commons that Canada needs:

to send a strong message that marijuana is illegal and harmful, but also to ensure the punishment fits the crime. We have to ask ourselves as a society whether it makes sense that a young person who makes a bad choice in life should receive the lasting burden of a criminal conviction . . . [under the proposal the] fine would be higher in many cases than what offenders are receiving now. It is important to know that when a young person is facing a charge, his or her parents will be notified.<sup>169</sup>

The punishments for growing cannabis would be increased.<sup>170</sup> While production of marijuana is currently a single offense with a maximum prison sentence of seven years, the proposed bill would create four separate categories of penalties in accordance with the quantity of marijuana being grown.<sup>171</sup> Growing one to three plants would result in a summary conviction offense with a fine up to \$5,000 and/or twelve months in jail.<sup>172</sup> Cultivating four to twenty-five plants would result in a fine of up to \$25,000 and/or eighteen months in jail if summarily convicted, or if indicted, “five years less a day imprisonment.”<sup>173</sup> Growing twenty-six to fifty plants would be punishable by up to ten

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<sup>167</sup> *Id.* A “youth” is defined in the proposal as a “person who, at the time the offence is committed, is or, in the absence of evidence to the contrary, appears to be twelve years of age or more but under eighteen years of age

<sup>168</sup> *Id.*

<sup>169</sup> *Contraventions Act: First Reading of Bill C-38*, 37<sup>th</sup> Parliament (2003) (statement of Hon. Martin Cauchon, Minister of Justice and Attorney General of Canada).

<sup>170</sup> See generally Health Canada, *Reform Bill*, *supra* note 155 at 3.

<sup>171</sup> Nickerson, *supra* note 155 at 3.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*



years in jail.<sup>174</sup> Growing more than fifty plants would be punished by a sentence of up to fourteen years.<sup>175</sup> Cauchon describes the new penalties as “taking aim at marijuana grow operations. . . [w]e know that criminal gangs are often behind those operations. This bill sends a clear message that we will not allow our neighborhoods to be threatened by these grow ops . . . .”<sup>176</sup> The bill also sets out a number of aggravating factors which would require judicial explanation for not imposing a prison sentence.<sup>177</sup> Aggravating factors include: risk to children in the building housing the operation, use of traps, explosive, or land owned by others (i.e. growers planting in secluded areas of area farm land) and creating a safety hazard<sup>178</sup> in a residential area.<sup>179</sup>

Opponents in the House of Commons debates have pointed out numerous problems with the bill, including the fact that it only deals with the problem of marijuana in the country and not other drugs; the amount allowed as “minor possession” is actually a quite substantial quantity of the drug (fifteen grams of marijuana, the point at which minor possession ends under the proposed bill, is actually equal to about 22-23 marijuana cigarettes); there is nothing in the bill to address what happens if the fines are not paid;<sup>180</sup> and there is nothing in the bill to address whether the criminal convictions of over 600,000 Canadians for past marijuana possession will be cleared.<sup>181</sup> Other problems

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<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Contraventions Act: First Reading of Bill C-38*, 37<sup>th</sup> Parliament (2003) (statement of Hon. Martin Cauchon, Minister of Justice and Attorney General of Canada).

<sup>177</sup> *Id.*

<sup>178</sup> See *supra* notes 114-123 for discussion of public safety issues.

<sup>179</sup> Nickerson, *supra* note 155 at 2.

<sup>180</sup> *Contraventions Act: First Reading of Bill C-38*, 37<sup>th</sup> Parliament (2003) (statement of Mr. Randy White, Langley-Abbotsford, Canadian Alliance).

<sup>181</sup> *Contraventions Act: First Reading of Bill C-38*, 37<sup>th</sup> Parliament (2003) (statement of Ms. Wendy Lill, Dartmouth, NDP).

include how to handle the likely increase in drivers under the influence of marijuana.<sup>182</sup>

While Cauchon points out that driving under the influence of alcohol or drugs is already a serious offense under the Criminal Code, he also admits that the police will have to be better trained to recognize when drivers are impaired by the drug.<sup>183</sup> Health Canada reports that one of the proposed methods of detecting drug impairment involves asking suspicious drivers to perform coordination tests and to provide a sample of urine.<sup>184</sup>

### *B. The United States Response to Canada's Proposal*

Another problem cited by Cauchon is “whether these reforms are reasonable, not only in the Canadian context, but also internationally.”<sup>185</sup> He points out that while the United States views “active prosecution as a key element of their policy response to possession of small amounts of cannabis . . . no significant difference in cannabis use was found between those jurisdictions that decriminalized cannabis use and those that did not.”<sup>186</sup> However, though the Minister relies on the individual states of the United States efforts to decriminalize marijuana for support of his bill, he fails to touch on the fact that the American federal government’s response to Bill C-38 has been decidedly unwelcoming.

Canada and the United States have been gradually growing apart politically in recent years.<sup>187</sup> While the United States Government has been becoming more conservative and leaning towards the right, Canada has become more and more

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<sup>182</sup> *Contraventions Act: First Reading of Bill C-38*, 37<sup>th</sup> Parliament (2003) (statement of Hon. Martin Cauchon, Minister of Justice and Attorney General of Canada).

<sup>183</sup> *Id.*

<sup>184</sup> Nickerson, *supra* note 155 at 2.

<sup>185</sup> *Contraventions Act: First Reading of Bill C-38*, 37<sup>th</sup> Parliament (2003) (statement of Hon. Martin Cauchon, Minister of Justice and Attorney General of Canada).

<sup>186</sup> *Id.* Cauchon is referring to the 12 current states that have laws decriminalizing small amounts of marijuana.

<sup>187</sup> See Jeet Heer, *Canadian Rhapsody*, Boston Globe, July 13, 2003, at H1.

progressive.<sup>188</sup> A large part of this movement may be due to the presence of a Liberal Prime Minister, Jean Chrétien.<sup>189</sup> Chrétien, the leader of the Liberal Party, has played a major role in pushing Bill C-38 and in introducing legislation legalizing same-sex marriage, and polls show that a majority of Canadians stand behind him, with estimates of supporters as high as 55-60%.<sup>190</sup> On the other side of the border, however; White House officials have warned that Canada's decriminalization efforts will result in higher rates of drug smuggling into the United States and higher rates of marijuana usage among Americans.<sup>191</sup> John Walters, Director of the United States Office of National Drug Control Policy, otherwise known as the "drug czar," summed up the situation by describing Canada as "an exploding source of highly-potent marijuana . . . [i]t's a multibillion-dollar industry and most of the production is headed south."<sup>192</sup> Law enforcement agencies estimate that some \$2.5 billion dollars per year of Canada's most powerful marijuana reaches American consumers.<sup>193</sup> Paul Cellucci, the United States Ambassador to Canada, hinted in May that if the country passes Bill C-38 northern border checks will become "more stringent – resulting in travel delays and huge added costs to Canadian exporters."<sup>194</sup> Walters, in a phone interview with the Boston Globe, implied that the border might have to be militarized.<sup>195</sup> He noted that while Mexico and Columbia are cooperating with United States drug policy by supporting eradication of

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<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> Nickerson, *supra* note 155.

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

marijuana crops, “Canada seems to be going in another direction . . . [w]e don’t want the border with Canada looking like the US-Mexico border.”<sup>196</sup>

There has been media speculation that the real problem is that Canada has become “yet another troublesome democracy, like Germany, France, and Turkey, with each nation’s elected officials answering to their constituents rather than to the voice of America.”<sup>197</sup> That certainly is a possibility in this situation; it appears that the majority of Canadians support Chrétien’s marijuana decriminalization efforts<sup>198</sup> and that the real opposition to the legislation is coming from the United States.<sup>199</sup> Cellucci, in another address, warned Canadians that the Americans were “disappointed and upset” over Canada’s recent refusal to support the United States Government efforts in Iraq.<sup>200</sup> Canada, however, does not seem to be very concerned about what American government officials think about their current political proceedings.<sup>201</sup> The Canadian media wasted no time in responding to United States “warnings” about passing Bill C-38.<sup>202</sup> The Halifax Chronicle-Herald reported that the United States “is the only country that has ever invaded ours, and it would do so again in a wink if it thought its interests here were seriously threatened . . . [w]e need no lectures from Americans about the defence of liberty and democracy.”<sup>203</sup> The Toronto Star stated “[f]irst we’re soft on Saddam, now we’re soft on pot,” (in response to US criticism of their refugee policy providing a haven for terrorists) then went on to describe the White House as “stuck in a time warp, taking

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<sup>196</sup> *Id.*

<sup>197</sup> Alex Beam, *To Canada, US Diplomacy is High Comedy*, Boston Globe, May 6, 2003, at D1.

<sup>198</sup> See *supra* note 190.

<sup>199</sup> See Beam, *supra* note 197; Nickerson, *supra* note 155.

<sup>200</sup> Beam, *supra* note 197.

<sup>201</sup> See Beam, *supra* note 197.

<sup>202</sup> See Colin Nickerson, *Ottawa’s Marijuana Plan Irks U.S.*, Boston Globe, May 10, 2003, at A1; Beam, *supra* note 197.

<sup>203</sup> Beam, *supra* note 197.

the world back to an earlier era of Reefer Madness.”<sup>204</sup> The United States, possibly thinking Canada wasn’t quite getting the message, created a punitive tariff on wheat exports soon after the introduction of Bill C-38 in May.<sup>205</sup> Was this a mere coincidence, or more of a power play?

Walters does have legitimate concerns, however. Most marijuana production in Canada is controlled by organized crime units,<sup>206</sup> which pose a threat to Canadian public safety and possibly to United States citizens if the importation of the drug from Canada drastically increases here.<sup>207</sup> Walters recognizes this threat when he describes the marijuana situation in Canada as “out of control – hydroponic production is growing from British Columbia to Manitoba to Quebec, run by outlaw biker gangs, and most of it flowing right to the US.”<sup>208</sup> He also voices concern about United States/Canada relations.<sup>209</sup> “You expect your friends to stop the movement of poison toward your neighborhood . . . [w]e have to be concerned about American citizens . . . [w]hen you make the penalties minimal, you get more drug production, you get more drug crime.”<sup>210</sup> While Canada accounts for only a small share of the marijuana smuggled into the United States, with Mexico and Columbia being at the top of the list, the use of Canadian marijuana by Americans is believed by some drug enforcement officials to have far surpassed that of either of those countries due to the high levels of THC (the active hallucinogenic compound in marijuana that creates the “high” feeling) it contains because

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<sup>204</sup> Nickerson, *supra* note 202.

<sup>205</sup> Beam, *supra* note 197.

<sup>206</sup> See *supra* note 118.

<sup>207</sup> See Nickerson, *supra* note 155.

<sup>208</sup> Nickerson, *supra* note 155.

<sup>209</sup> Nickerson, *supra* note 202.

<sup>210</sup> *Id.*

of the sophisticated growing techniques utilized in Canada.<sup>211</sup> David Murray, special assistant to John Walters, believes that Canadian marijuana is so abnormally strong that it should be considered a “hard drug, not a harmless high.”<sup>212</sup> To compare Canadian marijuana with other countries: Canadian hydroponic (meaning it is grown not in soil but in a specially fortified, fertilized water based medium) marijuana has average THC levels of fifteen to twenty percent, with some “primo” varieties containing up to thirty-four percent THC.<sup>213</sup> The average Latin American variety contains about six percent THC.<sup>214</sup> The marijuana smoked in the sixties and seventies contained only about two percent THC.<sup>215</sup> So the United States concerns are not completely unfounded; with higher and higher THC levels appearing in Canadian marijuana, and more and more of the drug being smuggled into America, it might be time to consider tightening our border.<sup>216</sup> However, it is debatable as to how much decriminalization will actually increase drug trafficking between the two countries.<sup>217</sup> Canadian Deputy Prime Minister John Manley described American expectations that decriminalization will result in increased trafficking “a bit of a leap.”<sup>218</sup>

#### IV. THE INEVITABLE IMPACT OF CANADIAN DRUG LAW REFORM

Canada and the United States have an economic partnership unlike any other in the modern world.<sup>219</sup> The two countries are each other’s largest trading partners,

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<sup>211</sup> See Nickerson, *supra* note 202.

<sup>212</sup> Nickerson, *supra* note 202.

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> See Nickerson, *supra* note 202.

<sup>217</sup> Nickerson, *supra* note 202.

<sup>218</sup> *Id.*

<sup>219</sup> Department of Foreign Affairs and International Trade’s Canada-United States Relations Web Site, available at <http://www.dfait-maeci.gc.ca/can-am/menu-en.asp?print=1&mid=1&cat=1029> (last visited November 9, 2003) [hereinafter Canada/US Trade Relations].

supporting more than two million jobs on each side of the border.<sup>220</sup> The trading relationship between the countries has more than doubled in value since 1994, with \$1.2 billion worth of trade crossing the Canada/United States border each day.<sup>221</sup> In 2002, Canada supplied 16.5 percent of all United States imports of goods and services, and purchased 19 percent of all American goods and services.<sup>222</sup> These numbers mean that the United States sold almost three times as many goods to Canada, a market of 30 million people, as we sold in 2002 to Japan, which has a larger market of over 125 million people.<sup>223</sup> There is currently a larger market for United States products in Canada than in all fifteen members of the combined European Union nations.<sup>224</sup> America is not only the largest foreign investor in Canada, but it is the largest recipient of Canadian investment; the countries obviously enjoy reciprocal economic benefit.<sup>225</sup> Canadians hope that such economic benefit will soon extend to the trade of marijuana, as well.<sup>226</sup> Jim Wood, the owner of a pot-friendly coffee shop in St. John, New Brunswick (just north of the Maine border), planned to begin selling pot in late September due to a loophole in Canadian medical-marijuana laws.<sup>227</sup> The unhindered trade relationship between the United States and Canada is beneficial to such a plan: “[w]hat we want,” he said “is Americans coming up here, spending their U.S. dollars on our pot.”<sup>228</sup> Wood, who already allows customers to smoke their own marijuana as long as they purchase coffee in his shop, reports that Americans stopping in ports along the route of North

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<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> Canada/US Trade Relations *supra* note 219.

<sup>226</sup> Stephen Glass, *Canada's Pot Revolution*, Rolling Stone, Sept. 4, 2003, at 79.

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

Atlantic cruise lines routinely visit his coffee shop.<sup>229</sup> As long as marijuana remains illegal in the United States, such a market will probably remain lucrative.

What is to become of this “world’s largest and most comprehensive trading relationship?” It seems that there can only be two answers to such a question: either the border between the United States and Canada will have to be tightened, even semi-militarized; or the United States is going to have to change its drug laws to become more in accord with its trading partners such as Canada and the various European countries that have recently begun to decriminalize marijuana as well.<sup>230</sup>

Militarizing the border between the United States and Canada could be expensive.<sup>231</sup> There has been media speculation that Canadian exporters would be the hardest hit, considering the billions of dollars per day they send into the United States.<sup>232</sup> The United States Government already spends over \$700 million per year for Immigration and Naturalization Services border enforcement operations.<sup>233</sup> There are over 11,000 border patrol agents.<sup>234</sup> The land borders between Canada, Mexico and the United States are approximately 5,500 miles in length, with the United States/Canada border being approximately 4,000 miles long and the United States/Mexico border being approximately 1,500 miles long.<sup>235</sup> That means that the United States Government

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<sup>229</sup> *Id.*

<sup>230</sup> Media Awareness Project Inc., UN Raps EU Countries Over Cannabis Let-Up at <http://www.mapinc.org/drugnews/v02.n354.a05.html> (last visited November 10, 2003).

<sup>231</sup> Nickerson, *supra* note 202.

<sup>232</sup> *Id.*

<sup>233</sup> Executive Summary, *The President’s Fiscal 2003 Immigration Budget* at <http://www.uscis.gov/graphics/publicaffairs/statements/budgetExecSummary.pdf> (last visited November 9, 2003) [hereinafter Executive Summary, *Immigration Budget*].

<sup>234</sup> *Id.*

<sup>235</sup> Securing our Borders at <http://www.bluestarbase.org/Securing%20Our%20Borders2.htm> (last visited November 9, 2003) [hereinafter Securing our Borders].



spends over \$63,000 per agent on general border enforcement.<sup>236</sup> However, when the numbers are broken down according to each country a difference begins to appear. As of Monday, November 3, 2003, there were estimated to be at least 9,500 border patrol agents along the Mexico/United States border.<sup>237</sup> This means the United States government spends approximately \$600 million of its border enforcement budget of \$700 million (or over \$400,000 per U.S./Mexico border mile) defending the militarized border between Mexico and the United States, and utilizes approximately six agents per mile of border.<sup>238</sup> A similar operation along the Canadian border could cost upwards of \$1.6 billion dollars per year and require over 24,000 agents.<sup>239</sup> This is a steep price to pay out of the United States coffers, in addition to the social and economic impact that would be suffered by both Canada and the United States if such a border crackdown were to occur.<sup>240</sup>

For the sake of international trade relations, the United States Government is going to have to consider reformation of federal drug laws. Liberal decriminalization across the board is not the only option; however, that is the route many countries have chosen to take and our laws, over time, are going to have to change to accommodate those countries' business relationships with the United States.<sup>241</sup> It may seem feasible to increase our federal budget to exert more control over the flow of goods between the

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<sup>236</sup> See generally Executive Summary, *Immigration Budget* *supra* note 233; Securing our Borders, *supra* note 235.

<sup>237</sup> US-Mexico Border Patrol Said Failing at <http://www.newsmax.com/archives/articles/2003/11/2/161018.shtml> (last visited November 9, 2003) [hereinafter Border Patrol Failing].

<sup>238</sup> See, e.g. Executive Summary, *Immigration Budget*, *supra* note 233; Securing our Borders, *supra* note 235; Border Patrol Failing, *supra* note 237.

<sup>239</sup> See, e.g. Executive Summary, *Immigration Budget*, *supra* note 233; Securing our Borders, *supra* note 235; Border Patrol Failing, *supra* note 237.

<sup>240</sup> Nickerson, *supra* note 202.

<sup>241</sup> See generally Nickerson, *supra* note 202; Media Awareness Project Inc., UN Raps EU Countries Over Cannabis Let-Up at <http://www.mapinc.org/drugnews/v02.n354.a05.html> (last visited November 10, 2003).

United States and their neighbor to the north, but it is absurd to spend federal money to more closely monitor our trade with every nation that chooses to decriminalize marijuana, especially as the numbers of such nations continue to grow.<sup>242</sup> John Walters cannot threaten to reduce trade with every country going in Canada's direction, especially considering the rate at which European nations are changing their drug laws.<sup>243</sup>

There are small steps that can be taken along the way to complete decriminalization, such as changing drug-offense sentencing procedures,<sup>244</sup> or using a regulatory/educational approach similar to the one utilized for tobacco and alcohol.<sup>245</sup> The government may fear that by relaxing marijuana laws, they are condoning its use. However, there is an arguable point that the costs of criminalizing the drug are far higher than the benefits of the prohibition policy.<sup>246</sup> An American bipartisan public health study found that medical treatment for drug offenders "dramatically reduces crime and is much cheaper than jail . . . every dollar invested in drug treatment can save \$7 in societal and medical costs."<sup>247</sup> Drug laws should change so that they reflect not the Anslinger-influenced, "Reefer Madness"-watching society of the sixties,<sup>248</sup> but a society with ever-increasing knowledge about marijuana use and its detrimental/beneficial effects. Such an approach, with the United States adapting to the changing world around them rather than expecting everyone else to adapt to American morals and values, could prevent worldwide breakdown between the United States, arguably one of the world's largest

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<sup>242</sup> UN Raps EU Countries Over Cannabis Let-Up at <http://www.mapinc.org/drugnews/v02.n354.a05.html> (last visited November 10, 2003).

<sup>243</sup> See Nickerson, *supra* note 155.

<sup>244</sup> Fox Butterfield, *With Cash Tight, States Reassess Long Jail Terms*, New York Times, Nov. 10, 2003 available at <http://www.nytimes.com/2003/11/10/national/10PRIS.html> (last visited November 10, 2003).

<sup>245</sup> Duke, *supra* note 1 at 283.

<sup>246</sup> See generally Duke, *supra* note 1.

<sup>247</sup> Riley, *supra* note 55 at 59.

<sup>248</sup> See ISRALOWITZ, *supra* note 11, at 97; ANDERSON, *supra* note 8, at 51.

economic powers, and their various trading partners that have begun to decriminalize marijuana, i.e. Italy, Luxembourg, Portugal, Spain,<sup>249</sup> Britain,<sup>250</sup> the Netherlands,<sup>251</sup> Switzerland,<sup>252</sup> Scotland,<sup>253</sup> Norway,<sup>254</sup> and France,<sup>255</sup> just to name a few.

#### *A. States Changing Drug-Offense Sentencing Procedures*

Apparently, some states in the United States have already begun the process of lightening their sentencing procedures for drug crimes and focusing on treatment instead.<sup>256</sup> Twenty-five states have passed laws in the last year eliminating mandatory minimum sentencing laws and offering treatment rather than imprisonment for certain classes of drug offenders.<sup>257</sup> While much of the change is due to budget crises across the nation, some politicians are seeing it as a way of making the criminal justice system more effective.<sup>258</sup> One of the best examples of the new change is the state of Washington, where laws were passed shortening sentences for drug offenders and creating funding for drug treatment.<sup>259</sup> The law allows judges to sentence offenders to treatment rather than prison, and allows the opportunity to have the charges dropped if the treatment program is successfully completed.<sup>260</sup> The money for the treatment fund will come from the

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<sup>249</sup> Media Awareness Project Inc., UN Raps EU Countries Over Cannabis Let-Up *at* <http://www.mapinc.org/drugnews/v02.n354.a05.html> (last visited November 10, 2003).

<sup>250</sup> Media Awareness Project Inc., Cannabis Changes Wrong, Says UN *at* <http://www.mapinc.org/drugnews/v02.n354.a05.html> (last visited November 10, 2003).

<sup>251</sup> Media Awareness Project Inc., UN Raps EU Countries Over Cannabis Let-Up *at* <http://www.mapinc.org/drugnews/v02.n354.a05.html> (last visited November 10, 2003).

<sup>252</sup> Media Awareness Project Inc., Swiss Move to Legalise Cannabis *at* <http://www.mapinc.org/drugnews/v01.n425.a08.html> (last visited November 10, 2003).

<sup>253</sup> Media Awareness Project Inc., Scotland's First Cannabis Café Set to Open *at* <http://www.mapinc.org/drugnews/v02.n843.a07.html> (last visited November 10, 2003).

<sup>254</sup> Media Awareness Project Inc., Commission Set to Call for Decriminalization *at* <http://www.mapinc.org/drugnews/v02.n123.a07.html> (last visited November 10, 2003).

<sup>255</sup> Media Awareness Project Inc., France: Koucher Opposes Drugs Law *at* <http://www.mapinc.org/drugnews/v01.n1693.a02.html> (last visited November 10, 2003).

<sup>256</sup> Butterfield, *supra* note 244

<sup>257</sup> *Id.*

<sup>258</sup> *See* Butterfield, *supra* note 244.

<sup>259</sup> Butterfield, *supra* note 244.

<sup>260</sup> *Id.*

money that will be saved by having fewer prisoners for the state to support.<sup>261</sup> The new laws will save the state an estimated \$45 million per year.<sup>262</sup> The federal government could stand to save a lot of money (and possibly apply that money to drug treatment and education opportunities) if federal sentencing guidelines were lessened as well; or if marijuana prosecutions were reduced to mere formalities such as tickets/fines, or better yet, if marijuana was regulated under a system similar to alcohol or tobacco, which are arguably more dangerous substances to the human body.<sup>263</sup>

#### *B. Education/Regulation Approach*

Another approach towards marijuana to be considered could be the education/regulation approach utilized in the sale of both alcohol and tobacco. Alcohol and tobacco are both legal, but restricted in the sense that children do not have access to them,<sup>264</sup> advertising is limited,<sup>265</sup> and nationwide comprehensive educational campaigns about the dangers of both have been heavily promoted over the last decade.<sup>266</sup> The rates of consumption of both of these drugs have drastically fallen in recent years despite the legality of the substances, probably due to the fact that Americans have become more health-conscious and aware that any drug can be harmful to one's health.<sup>267</sup> A similar approach could be used for marijuana. If marijuana were decriminalized, but still subject to regulation similar to that of alcohol and tobacco, children would not have access, the places it could be sold would be limited, and it could not be consumed in most public

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<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

<sup>263</sup> See Duke, *supra* note 1 at 22-42.

<sup>264</sup> Duke, *supra* note 1 at 259.

<sup>265</sup> Duke, *supra* note 1 at 270-71.

<sup>266</sup> See Duke, *supra* note 1 at 283-88.

<sup>267</sup> Duke, *supra* note 1 at 290.

places.<sup>268</sup> Education about the health effects of a drug can be a powerful deterrent, as evidenced by the success of the anti-smoking campaign led by the Surgeon General, the Health and Human Services Agency, the American Cancer Society, and others.<sup>269</sup> With regard to cigarette smoking, “Americans have responded rationally to truthful data about a drug.”<sup>270</sup> It is believed that Americans would respond in a similarly rational way to the truth about marijuana.<sup>271</sup> Our knowledge about the effects of marijuana has come a long way since the days of the Marijuana Tax Act, Nixon, and Henry Anslinger.<sup>272</sup> Drug law reform advocates have theorized that part of the drug problem in this country can be attributed to the miseducation of our youth on drug use.<sup>273</sup> Compare the approach to educating teenagers about sex to educating them about drugs: while teaching teens about abstinence seems like a good idea, rising teenage pregnancy and sexually transmitted disease rates often cause schools to teach “safe sex” curriculum as well, despite fears that it may appear as encouraging participation in the activity.<sup>274</sup> Exclusively focusing on abstinence would be underestimating the comprehension of our youth, especially when there is evidence that many of them are already engaging in sexual intercourse.<sup>275</sup> However, when it comes to drugs “the pragmatism prominent in many schools cannot be found.”<sup>276</sup> Abstinence seems to be the only goal of drug education . . . “any use of illicit

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<sup>268</sup> See Duke, *supra* note 1 at 259-72.

<sup>269</sup> Duke, *supra* note 1 at 283.

<sup>270</sup> *Id.*

<sup>271</sup> See generally Duke, *supra* note 1 at 259-89.

<sup>272</sup> See generally Anderson, *supra* note 8 at 50.

<sup>273</sup> Duke, *supra* note 1 at 289.

<sup>274</sup> *Id.*

<sup>275</sup> *Id.*

<sup>276</sup> *Id.*

drugs is treated as ‘abuse,’ and moralizing takes the place of teaching about different symptoms and severities of drug abuse or dependency.”<sup>277</sup>

### *C. Decriminalization*

The option that would put the United States most in sync with the above mentioned countries that have already begun decriminalization is to begin a process of decriminalization for our own country.<sup>278</sup> In a country where the courts are backlogged with drug cases and not since Prohibition have our law enforcement officials been so prone to corruption, decriminalization could become more and more attractive.<sup>279</sup> In a time of increasing governmental budgetary deficits,<sup>280</sup> the resources expended on prosecuting marijuana personal-possession cases (which make up the majority of federal marijuana prosecutions)<sup>281</sup> may need to be reallocated for general day-to-day law enforcement activities. Proponents of marijuana law reform see the criminalization of the drug as a “cripple to our criminal justice system,” creating a black market in which there is no legal recourse for those who are cheated, leading to murder and other violent crimes as the market participants take matters into their own hands.<sup>282</sup> If the United States Government were to reform the drug law system to reflect the health needs of drug-using citizens rather than the criminality of their actions, like Canada,<sup>283</sup> United States citizens would not only have a better chance of overcoming their addictions, but would also be

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<sup>277</sup> *Id.*

<sup>278</sup> Media Awareness Project Inc., UN Raps EU Countries Over Cannabis Let-Up at <http://www.mapinc.org/drugnews/v02.n354.a05.html> (last visited November 10, 2003).

<sup>279</sup> Duke, *supra* note 1 at 8.

<sup>280</sup> Butterfield, *supra* note 244.

<sup>281</sup> Marijuana Prevalence Estimates, *Office of National Drug Control Policy* at [http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana\\_b.html](http://www.whitehousedrugpolicy.gov/drugfact/marijuana/marijuana_b.html) at 4 (quoting Federal Bureau of Investigation, *Crime in the United States 2001, Persons Arrested* (October 2002) (last visited September 22, 2003)).

<sup>282</sup> Duke, *supra* note 1 at 8.

<sup>283</sup> United States-Canada Border Drug Threat Assessment, *Response to the Situation* at <http://www.usdoj.gov/ndic/pubs07/responses.htm> at 2 (last visited September 22, 2003)[hereinafter US-Canada Border Assessment, *Response*]; see generally *supra* page 9.

saving the nation money as well.<sup>284</sup> A ticketing system, similar to the one suggested in Canada's proposed Bill C-38, would not only reduce the amount of people in prison for personal possession therefore saving the government money on supporting said prisoners, but would bring in an additional source of revenue for law enforcement agencies, much like speeding tickets.<sup>285</sup>

## V. CONCLUSION

It is obvious that the proposed decriminalization of marijuana in Canada is already having detrimental effects on the United States' relations with the country.<sup>286</sup> The inference can easily be drawn that the United States may have similar conflicts with many other countries as they begin listening to their own citizens on the decriminalization issue rather than bowing down to the requests of the United States,<sup>287</sup> a country in which our current drug laws are based on the misguided, prejudicial facts presented to Congress with the proposal of the Marijuana Tax Act of 1937.<sup>288</sup> Society's knowledge on the subject of marijuana and drug use in general has increased considerably; we know now that marijuana has shown promise in treating diseases causing chronic pain,<sup>289</sup> that the drug is not physically addictive,<sup>290</sup> and that drug laws focusing on treatment rather than prosecution generally are more successful and save the government more money.<sup>291</sup> Many of our international trading partners are currently either in the process of decriminalizing marijuana or are planning to in the near future.<sup>292</sup>

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<sup>284</sup> Riley, *supra* note 55 at 59.

<sup>285</sup> Nickerson, *supra* note 155 at 2.

<sup>286</sup> *Id.*

<sup>287</sup> Beam, *supra* note 197.

<sup>288</sup> Anderson, *supra* note 8 at 51.

<sup>289</sup> *Medical Marijuana FAQ*, *supra* note 144.

<sup>290</sup> The Merck Manual, *supra* note 94.

<sup>291</sup> See Riley, *supra* note 55 at 59.

<sup>292</sup> See *supra* notes 249-55.

It has been proven that countries with decriminalization procedures in place, and even in American states that have legalized marijuana for medical purposes, there is no increase in marijuana usage linked to the decriminalization policy.<sup>293</sup>

Instead of desperately holding on to the misguided laws of the past that are based on untruths and prejudices, and attempting to coerce our international allies into cooperating with them through threats of punitive trade actions,<sup>294</sup> maybe its time for the United States Government to acknowledge what twelve states and countless other foreign nations have realized: the benefit of prohibition must outweigh the social costs, and the scale in America is rapidly tipping in the wrong direction. In a discussion of current drug laws, an article in *The Economist* once stated: “repeal [modern drug laws], replace them by control, taxation, and discouragement. Until that is done, the slaughter in the United States . . . will continue. Europe’s turn is next.”<sup>295</sup> The European nations, much like Canada, seem to be moving toward a more comprehensive drug strategy to avoid the burden prohibition places on society.<sup>296</sup> Hopefully, it is only a matter of time before the United States begins to do the same.

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<sup>293</sup> *Contraventions Act: First Reading of Bill C-38*, 37<sup>th</sup> Parliament (2003) (statement of Hon. Martin Cauchon, Minister of Justice and Attorney General of Canada).

<sup>294</sup> Nickerson, *supra* note 155.

<sup>295</sup> Riley, *supra* note 55 at 57.

<sup>296</sup> See *supra* notes 249-55.